

REMARKS

This responds to the Restriction Requirement dated March 27, 2006, which states:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-33, drawn to a system for detecting dissociated ventricular tachyarrhythmia, classified in class 600, subclass 515.
- II. Claims 34-50, drawn to a method for detecting dissociated ventricular tachyarrhythmia, classified in class 600, subclass 515.

(See Restriction Requirement at 2.)

In response to this Restriction Requirement, Applicant provisionally elects, *with traverse*, to prosecute Group I, claims 1-33, of which claim 1 has been amended. In view of the above traversal, Applicant respectfully declines to cancel the non-elected claims 34-50. If such non-elected claims are withdrawn by the Examiner in spite of Applicant's traversal, Applicant respectfully reserves the right to introduce and prosecute non-elected claims in this patent application, or in one or more divisional applications. Applicant's grounds for traversal are given below.

Grounds for Traversal

The Restriction Requirement asserts:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another materially different process. The measured time intervals in this invention can be used as indicators of other phenomena such as progression of heart disease, myocardial performance, etc. . . . Because these invention are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

(Restriction Requirement at 2.) Applicant respectfully traverses on the grounds that the stated requirements of the MPEP for restriction between process and apparatus for its practice have not been established by the Restriction Requirement. The Restriction Requirement asserts that Groups I and II are distinct because "the apparatus as claimed can be used to practice another materially different process," because the "measured time intervals in this invention [i.e., the

apparatus] can be used as indicators of other phenomena such as progression of heart disease, myocardial performance, etc.” However, this ignores the fact that the inquiry into distinctness must focus on the invention as claimed. For example, the MPEP requires that “Related inventions are distinct if the inventions *as claimed* are not connected in at least one of design, operation, or effect.” (See MPEP § 802.01 (emphasis in original)). For Group I, claim 1 recites, “a processor circuit with executable instructions *to determine whether a dissociated ventricular tachyarrhythmia exists* using time intervals, in which each time interval is between a first time indicative of a ventricular depolarization and a second time indicative of a mitral valve closure.”

For Group II, claim 34 similarly recites “determining whether a dissociated ventricular tachyarrhythmia exists using the time intervals.” Therefore, regardless of whether such time intervals could be used as indicators of other phenomena, as asserted by the Restriction Requirement, when the proper inquiry is focused on the invention *as claimed*, both Groups I and II are limited by their language to determining whether a dissociated ventricular tachyarrhythmia exists. Therefore, Applicant respectfully submits that the Restriction Requirement has failed to establish a *prima facie* case of distinctness between Groups I and II.

The MPEP also states that a proper Restriction Requirement requires that there would be a serious burden on the examiner if restriction is not required. (See MPEP § 803.) “For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search.” (See MPEP § 803.) However, the Restriction Requirement has classified both Groups I and II in class 600, subclass 515, and there is no objective evidence of record of any serious burden on the examiner to search and examine Groups I and II together. Accordingly, Applicant respectfully submits that the Restriction Requirement has failed to establish the *prima facie* serious burden on the examiner.

In view of the above, Applicant respectfully requests withdrawal of the Restriction Requirement and coherent examination of both of Groups I and II together.

CONCLUSION

Applicant respectfully submits that the claims are in condition for coherent examination of both Groups I and II together, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

WILLIAM C. LINCOLN ET AL.

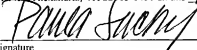
By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6951

Date April 16, 2006 By 
Suneel Arora
Reg. No. 42,267

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 17 day of April, ~~2006~~ 2006.


Name


Signature